IN THE HIGH COURT OF JUDICATURE OF BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

LAND ACQUISITION REFERENCE NO.77 OF 1987

The SLAO(7)

And

M/s.Byramjee Jeejeebhoy Pvt.Ltd. ..Claimants.

And

Bombay Municipal corpn. for Gr.Bombay. ..Acq.Body.

Mr.C.M.Korde with Mr.Milind Jadhav i/b. S.H. Mhasvadkar for claimants.

Mr.U.J.Makhija with Mr.H.C.Pimple, for Acq.Body.

Mr. P.V.Dhopatkar, AGP for SLAO.

CORAM: A.M.KHANWILKAR,J
DATE : OCTOBER 17, 2005.

P.C. :

1. Heard counsel for the parties. Perused the documents on record. This is reference under section 18 of the Land Acquisition Act seeking enhanced compensation in respect of lands acquired for the purpose of 100’ wide D.P. Road, situated at village Oshivara, Jogeshwari, Mumbai bearing (1) Survey No. & Hissa No. 1/15 bearing CTS 563pt., 953.75 sq.mtrs. (2) Survey No. & Hissa No.1/15, CTS No.565pt., 300.00 sq.meters. (3) Survey No.& Hissa No.48/4pt., CTS No.720 pt., 3494.28 sq.meters. (4) Survey No. & Hissa No.47pt., CTS No.737 pt., 5861.00 sq.meters. It is seen that possession of the above said lands

were handed over by the claimants to the aquiring body Bombay Municipal corporation on 3rd September, 1981; and agreement between the claimants and corporation in respect of handing over of possession and payment of advance compensation was executed on 9th July, 1982. Under the said agreement, the claimants accepted interim amount offered on behalf of the corporation without prejudice to their right to claim fair market price, which was to be determined in acquisition proceedings and reference arising therefrom. What is relevant today for our purpose, in this agreement, the claimants agreed to accept only 4% interest on the market value of land to be determined under the acquisition proceedings.

2. Be that as it may, notification under Section 126(4) of the M.R. & T.P. Act, 1966 read with section 6 of L.A.Act, 1894 came to be issued on 3rd August, 1982. The said notification was published in Maharashtra Gazette part I at page 1111 on 26th August, 1982. This is the relevant date for the purpose of valuation. The claimants submitted the claim for compensation before the SLAO in respect of the above said lands and claimed market value at the rate of Rs. 400/- per sq. meter. Besides the claim, the claimant produced evidence in support of

his claim for compensation. The SLAO upon considering said materials and the claim submitted by the claimants passed award on 13th June, 1984. The SLAO essentially has relied on the award passed in respect of some other lands which were acquired at the same time and was only 300 meters away from the land under acquisition. The said land for the sake of brevity described as "Bandivali land" in respect of which notification was issued around three months prior to the present acquisition notification. Be that as it may, the SLAO has relied on the award passed in respect of the said land wherein fair market price has been determined at Rs. 220/- per sq. meter. However, in so far as the present lands are concerned, the SLAO found that the same will require cutting and filling, for which deduction of Rs.65 per sq. meter will have to be provided. Applying that principle, SLAO determined the market price of the present land at the rate of Rs.155 per sq. meter (that is Rs.220/- per sq. meter as fixed in respect of Bandivali land minus Rs.65/- per sq. meter for cutting and filling including the present land).

3. Formal possession of the land has been taken on 15th June, 1984 after the award was passed. On

16th July, 1984, claimants filed application under section 18 for enhancement. According to the claimants, they were entitled to market rate in respect of lands at the rate of Rs.400/- per sq. meter. That Application has now been placed before this court as reference under section 18 of the Act. The claimants have produced evidence in support of the claim and have also examined valuer who has stated during the evidence that land in question should fetch 43% more than market price awarded to Bandivali land. On the basis of the evidence as adduced, counsel for the claimants contends that although the the claimants have asked for enhancement up to Rs.400/- per sq.meter in respect of lands under acquisition, however, the claimants in any case would be entitled to the extent of proportionate increase, given in respect of Bandivali land in reference proceedings before this court being LAR No.33 of 1984 decided on 10th August, 1987.

4. Mr. Makhija for the acquiring body however, contends that the present land cannot bear the same market price as in the case of Bandivali land for more than one reason. He has pointed from the evidence that the land in question is not regular shape land. Besides, Bandivali land was only 1/4th

of the area of the land in question and half portion of the Bandivali land was covered under industrial zone for which reason, it was bound to fetch higher market price. The land in question is over 3000 sq. meters and under the extant regulation atleast 15% area is open space, which is unbuildable. Besides the land in question is bifurcated by Private Truck road for which reason, it is not developed. He further contends that having regard to the depth of the lands, it will require road to connect the ends. He has relied on the evidence of the valuer to point out the above position from the record.

5. Having considered rival submissions and going through the record, in the first place, it is seen that SLAO has awarded Rs.155/- per sq.meter in respect of the present land essentially relying on the fair market price determined in respect of Bandivali land which was also acquired around the same time. Indeed, Bandivali land has been awarded fair market price by the SLAO at the rate of Rs.220/- per sq. meter. The SLAO has provided for deduction in respect of present land towards cutting and filling charges at the rate of Rs.65/- per sq. meter to arrive at Rs.155 of the fair market price of the present land. It is not in dispute that reference

under section 18 was filed before this court in respect of Bandivali land. In that proceedings, this court provided enhanced compensation in respect of the Bandivali land at the rate of Rs.262/- per sq. meter. That award has been accepted by the acquiring body. If it is so, there is no reason why proportionate increase should not be provided for, in respect of the present land which was also acquired around the same time and only at the distance of 300 meters away from the Bandivali land.

6. According to Mr.Makhija, the learned counsel for the acquiring body, both the lands are incomparable. The argument that land at Bandivali is half area of the present land and or that half area of the bandivali land was covered by industrial zone and that the present land is bifurcated by private truck road and the depth of plot requiring road to connect two ends, so that substantial portion is unbuildable would be inconsequential. For the simple reason that this factors were relevant even for the SLAO who fixed fair market price of the land relying on the fair market price of the land in respect of bandivali land only on deducting Rs.65 for cutting & filling charges of the present land. In other words, deduction in respect of the present land is only

towards cutting and filling costs as has been determined at Rs.65 per sq. meter. For the present we will have to proceed on the basis that since bandivali land has been provided enhanced compensation by this court at the rate of Rs.262 per sq. meter, even the claimants in the present case will be entitled to enhanced compensation in the same proportion. In other words, the claimants will be entitled to compensation at the rate of Rs.185 per sq. meter(rounded of). This calculation is arrived at in the following manner [155 x 262 /220=184.6]. I have no hesitation to adopt this course because even SLAO has relied on the fair market price determined in respect of Bandivali land only by providing Rs.65 per sq. meter in respect of present land. It is not open to the acquiring body to now doubt the correctness of the said principle because that award has been allowed to become final by the acquiring body.

7. Accordingly, the claimants are entitled to compensation at the rate of Rs.185/- per sq. meter. It cannot be overlooked that in the present case the claimants have agreed to accept only 4% interest on the compensation amount, thereby waiving their right regarding statutory interest. On computing the

enhanced compensation claimants will be entitled to 4% interest on the additional amount in terms of the agreement arrived at by them with the acquiring body. This is also one reason which has persuaded me to give proportionate increase to the claimants as has been granted in the context of market price of Bandivali land determined by this court in Reference No.33 of 1984.

8. Accordingly, this reference should succeed on the above terms. Claimants are entitled for compensation at the rate of Rs.185/- per sq. meter and interest at the rate of Rs.4% in terms of agreement arrived at between the parties.

9. Counsel for the parties have placed on record agreed calculation showing the amount which is to be paid to the claimants towards compensation on the basis of this order. The same is reproduced as follows:

CALCULATION OF ENHANCEMENT

A	Market Value of the land 10609.03 sq.mtrs. x Rs.185 per sq.mtr.	Rs.19,62,670.55
B	Solatium at 30% on "A" above.	Rs. 5,88,801.16
C	Compensation under 23(1A) 655 days (26/8/82 till 13/6/1984) at 12%	Rs. 4.22.562.96

	per annum on "A" above.	
D	Total compensation payable (A+B+C)	Rs.29,74,034.67
E	Amounts paid to the Claimants : 15/06/84 : Rs.12,03,789.00 04/09/81 : Rs. 6,87,500.00 15/04/86 : Rs. 2,06,969.00 16/06/86 : Rs. 1,33,768.99 10/06/87 : Rs. 1,48,669.00 16/12/85 : Rs. 2,46,690.00 Total Rs.26,27,385.99	Rs.26,27,385.99
F	Balance Compensation payable (D-E)	Rs. 3,46,648.68
G	Interest payable at 4% per annum: On Rs.12,03,789.00 from 04/06/81 to 14/06/84 : 1,33,768.99 On Rs.2,46,690.00 from 04/09/81 to 15/12/85 : 42,227.92 On Rs.2,06,969.00 from 04/09/81 to 14/04/86 : 38,173.02 On Rs.1,48,669.00 from 04/09/81 to 09/06/87 : 34,279.40 On Rs.1,33,768.99 from 04/09/81 to 15/06/86 : 25,581.01 On Rs.3,46,648.68 from 04/09/81 to 17/10/05 : 3,34,454.24 Total Rs. 6,08,484.59	Rs.6,08,484.59
H	Total amount payable to the Claimants (F+G) as on 17/10/2005	**Rs.9,55,133.27**

Further interest is payable to the claimants at the rate of 4% per annum on Rs.3,46,648.68 from

18/10/2005 till the date of payment.

The Mumbai Municipal Corporation is liable to pay to the claimant the above amount of Rs.9,55,133.27 with interest on Rs.3,46,648.68 from 18/10/2005 till the date of payment.

10. Ordered accordingly.